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City of Chicago  
Richard M. Daley, Mayor

Department of Environment

William F. Abolt  
Commissioner

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**DEPARTMENT OF ENVIRONMENT**  
**Fax Cover Sheet**

Fax #: (312) 744-6451

Date: 07/22/99

To: Brad Bradley Fax #: 886-4071

From: Renante Marante Phone #: 742-0123

# of pages including cover: 15

Comments: Re: Consent decree between City  
ENC.

If you do not receive all the pages please call (312) 744- \_\_\_\_\_

**IMPORTANT: THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW.** If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the United States Postal Service. Thank you.

NEIGHBORHOODS



**WHEREAS**, the City acquired and currently holds the title to the Site, which the City

acquired through the tax reactivation process; and

**WHEREAS**, NL has denied the allegations in the Lawsuit; and

**WHEREAS**, NL and the City wish to avoid the costs and uncertainties involved in further litigation and to resolve, as provided herein, the City's claims against NL related to its past ownership and operation of the Site; and

**WHEREAS**, the existence of this Consent Decree and the provisions contained herein shall not be deemed an admission of or constitute evidence by or against either party or an admission of liability by NL with regard to any of the allegations set forth in the City's Lawsuit;

**NOW** therefore, it is hereby agreed, adjudged, and ordered as follows:

**I. DEFINITIONS**

1. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

"City" shall mean the City of Chicago.

"NL" shall mean NL Industries, Inc.

"Remedial Design/Remedial Action Work Plan" or "RD/RA Work Plan" shall mean the remedial design/remedial action work plan for the Dutch Boy Site, prepared on or about March 9, 1999 by Environmental Strategies Corporation (ESC) on behalf of NL in accordance with the UAO and approved by the U.S. EPA, together with the Remedial Action Technical Specifications, the Project Health and Safety Plan, the Asbestos Abatement Work Plan, and the Remedial Action Design Drawings prepared by ESC in connection with and as part of the RD/RA Work Plan. The RD/RA Work Plan is incorporated by reference and made a part of this Consent Decree as though fully set forth herein.

"Site" shall mean the property located at or about 12000 to 12054 S. Peoria and 901-935 W. 120<sup>th</sup> Street in the West Pullman neighborhood of Chicago, Illinois. See Site map from RD/RA Work Plan attached as Exhibit A and map of Site parkway attached as Exhibit R.

"Site Access Agreement" shall mean the Right of Entry Agreement entered into on or about May 6, 1999, by and between the City of Chicago and NL Industries, Inc. granting NL access to the Site for the purpose of performing the work detailed in the RD/RA Work Plan or any other work plan and all subsequent renewals of said agreement. The Site Access Agreement is incorporated by reference and made a part of this Consent Decree as though fully set forth herein.

"Unilateral Administrative Order" or "UAO" shall mean the administrative order pursuant to section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9606 (a) and Section 7003 of the Resource Conservation and Recovery Act, as Amended, 42 U.S.C. § 6973, issued by the United States Environmental Protection Agency (U.S. EPA) on or about March 26, 1996 against NL in the matter captioned, *Dutch Boy Site, Chicago, Illinois, Respondent: NL Industries, Inc.*, Docket No. V-W-96-C-347.

## **II. REMEDATION**

2. (a) NL shall comply with the terms and conditions of the RD/RA Work Plan for all work specified therein.

(b) Within thirty (30) days of the entry of this Consent Decree, NL shall prepare and submit for the City's review and approval (which shall not unreasonably be withheld) a supplemental work plan for all work specified in paragraph 3 below.

3. NL shall also excavate, treat, and dispose of off-site, hazardous waste and soils with lead concentrations above 1,400 mg/kg under those paved areas on the Site identified as SS19, SS25,

SS26, SS27, and SS28, as identified on the map attached as Exhibit C, from the Risk Management Plan, Dutch Boy Site prepared by the Environ International Corporation (December, 1998), to at least the same extent and in accordance with the clean up standards set forth in Section 3.4 of the RD/RA Work Plan, subject to the following conditions and limitations:

- a) NL shall not be required to perform work to the extent that NL's expenditures for the excavation, treatment, and disposal of soils under paved areas SS19, SS25, SS26, SS27, and SS28 on the Site identified in paragraph 3 would exceed a maximum amount of Four Hundred Thousand Dollars (\$400,000.00). The City shall pay for all costs associated with removal and disposal of the pavement, as set forth in paragraph 3(f).
- b) The City shall pay for supplemental investigation of lead contamination under paved areas not identified in paragraph 3 above where sampling data currently indicates lead contamination increasing with depth, and the City shall have the option of requiring that NL excavate, treat, and dispose of soils in these additional areas so long as NL's maximum expenditure cap of Four Hundred Thousand Dollars (\$400,000.00) is not exceeded.
- c) If NL's expenditures for the excavation, treatment, and disposal of soils under paved areas identified in sub-paragraphs 3(a) and 3(b) above do not exceed Three Hundred Twenty-Five Thousand Dollars (\$325,000.00), NL shall pay to the City the difference between NL's actual expenditures and Three Hundred Twenty-Five Thousand Dollars (\$325,000.00).
- d) For purposes of determining the amount of the expenditures incurred by NL

under this paragraph, NL's cost shall be its actual expenditure at the Site; provided, however, that actual expenditures shall not include any unreasonable expenditure or any expenditure not required by paragraph 3. If a dispute arises between the City and NL regarding the reasonableness of an expenditure, the dispute shall be resolved as provided by Section X, paragraph 11, of this Consent Decree.

- e) In order to qualify as an expenditure towards NL's maximum expenditure cap, NL shall have submitted all costs and estimates for the work to be performed pursuant to paragraph 3 of this Consent Decree to the City for the City's review and approval (which shall not unreasonably be withheld) before proceeding with such work.
- f) The City shall review and approve all invoices presented by NL, unless there is a dispute subject to Section X, paragraph 11. The City shall reimburse NL for the cost of removing and disposing of pavement in the areas identified in sub-paragraphs 3(a) and 3(b) within sixty (60) days of receipt of invoices for such work from NL; provided, however, that prior to NL's proceeding with any pavement removal work required under paragraph 3, NL shall obtain an estimate for the pavement removal and obtain the City's approval of that estimate (which shall not unreasonably be withheld). The City shall not be responsible for reimbursement of any pavement removal work performed by NL without the City's prior approval. The time period for NL's performance of any work that requires the City's approval shall be extended by the amount

of time taken by the City to give its approval. If, during the course of the work required under paragraph 3, NL discovers additional work that needs to be performed immediately in order to fulfill its obligations under paragraph 3, NL will not be required to obtain the City's prior approval to undertake the work if NL cannot reasonably seek approval without incurring additional cost.

### **III. UNDERGROUND STORAGE TANKS**

4. NL shall remove the underground storage tanks ("USTs") on the Site identified in the RD/RA Work Plan and remediate any soil contamination related to the USTs in accordance with the terms and conditions set forth in Section 3.2 of the RD/RA Work Plan; provided that if, during excavation of the USTs identified in the RD/RA Work Plan, NL encounters additional, as yet unknown USTs, NL shall remove those USTs and remediate any soil contamination related to those USTs in the same manner as provided in this paragraph.

### **IV. BASEMENT SLUDGE & SEDIMENT**

5. NL shall remove any basement sludge and sediment at the Site and dispose of any such sludge and sediment in a manner consistent with all applicable federal, state, and City of Chicago Municipal regulations, subject to the following conditions:

- a) NL's expenditures for basement sludge and sediment removal and disposal at the Site shall not exceed Fifty Thousand Dollars (\$50,000.00). NL's expenditures for basement sludge and sediment removal and disposal shall not accrue towards NL's maximum expenditure cap for excavation, treatment, and disposal of lead-contaminated soils set forth in paragraph 3.

- b) NL shall not be required to remove basement sludge and sediment that is under water: provided, however, that if the City removes the water, thereby making the sludge and sediment accessible, NL shall remove and dispose of the sludge and sediment, so long as the maximum expenditure cap for sludge and sediment removal and disposal set forth in paragraph 5(a) is not exceeded.
- c) NL shall not be required to remove any concrete or other barriers in order to remove basement sludge and sediment.
- d) NL shall submit to the City documentation of its expenditures for basement sludge and sediment removal and disposal.

**V. DEBRIS PILES**

6. NL shall remove and dispose of any debris piles on the Site identified in the RD/RA Work Plan in accordance with the terms and conditions set forth in Section 3.3 of the RD/RA Work Plan. NL shall not be required to remove railroad ties and tires present on the Site or unearthed during remediation work at the Site, but shall stockpile such materials for removal by the City. NL shall use reasonable efforts to ensure that no lead-contaminated soil in excess of 1,400 mg/kg remains adhered to the railroad ties and tires.

**VI. SITE ACCESS, INSURANCE, AND INDEMNITY**

7. NL's access to the Site shall be governed by the Site Access Agreement. At all times during the term of this Consent Decree, NL shall comply with the insurance and indemnity provisions set forth in the Site Access Agreement.



**VII. PROJECT SCHEDULE, PROGRESS REPORTS, AND STIPULATED PENALTIES**

8. NL shall complete the work required under this Consent Decree in accordance with the schedule set forth in the RD/RA Work Plan, including any extensions to that schedule as may be approved by U.S. EPA. NL shall have an additional sixty (60) days from completion of the RD/RA work to complete any work not covered by the RD/RA Work Plan.

- a) Upon request, NL shall also provide the City with copies of all reports required under Section 7.0 of the RD/RA Work Plan and any other reports or work summaries generated as a result of the tasks described in this Consent Decree.
- b) In the event that NL fails to complete the work set forth in paragraph 3 of this Consent Decree in accordance with the schedule set forth above, or fails to submit any material report required under this Consent Decree, or fails to comply materially with the Site Access Agreement during the term of this Consent Decree, then, upon a written notice of default to NL (which NL shall have thirty (30) days to cure without incurring a penalty), NL shall pay the City the sum of \$500 per day as a stipulated penalty for failures from the date that the failures first occurred until the date when the failures were cured. Payment of stipulated penalties under this paragraph shall not in any way limit the City's right to obtain any other relief to which it may be entitled to under this Consent Decree.

**VIII. NO FURTHER REMEDIATION LETTER**

9. Promptly upon entry of the Consent Decree, the City shall enroll the Site in the State

of Illinois Site Remediation Program, 35 Ill. Admin. Code § 740 et seq. In addition, the City shall work with the State to obtain a No Further Remediation letter for the Site, which letter shall be recorded with the deed to the Site, as provided by 35 Ill. Adm. Code § 740.620

**IX. OPERATION AND MAINTENANCE**

10. Once NL completes the clean up activities required pursuant to the U.S. EPA's UAO and any additional work required pursuant to this Consent Decree, the City shall be responsible for any operation and maintenance costs associated with the Site.

**X. ENFORCEMENT AND PAYMENT OF COSTS**

11. If any dispute arises between the City and NL regarding the terms or conditions of this Consent Decree, prior to initiating a court action to enforce this Consent Decree, the City or NL must provide notice of the dispute to the other party and make a good faith effort to resolve the dispute. If either party's good faith effort to resolve the dispute fails to resolve the dispute within 14 days from the date notice of the dispute was provided to the other party, either party may seek judicial enforcement of this Consent Decree. If any party seeking judicial enforcement of this Consent Decree is determined by the Court to be the prevailing party, the non-prevailing party agrees to pay the prevailing party its reasonable costs, including attorneys fees, incurred in pursuing such action. In addition, if the dispute related to payment of costs under this Consent Decree, the non-prevailing party shall pay to the prevailing party interest.

12. The parties agree that the Circuit Court of Cook County, Illinois, shall have jurisdiction and venue with respect to any action commenced by any party for the purposes of interpretation and enforcement of the terms and conditions of this Consent Decree.

**XI. MUTUAL RELEASE FROM LIABILITY**

13. For good and valuable consideration, including the actions that NL shall take pursuant to this Consent Decree, the City releases, waives, and discharges NL, its past and present affiliates, parents, subsidiaries, divisions, branches, departments, agencies, predecessors, successors, and the heirs, principals, employees, associates, owners, stockholders, assigns, devisees, agents, directors, officers, representatives, insurers, lawyers, and predecessors in interest, of each of them, and all persons acting by, through, under, or in concert with them from any and all claims, demands, damages, or losses, whether known or unknown, absolute or contingent, made or asserted or those that could be asserted by the City against NL related to the Site, including any claims arising out of any action NL has taken or failed to take with respect to the Site.

For good and valuable consideration, including the actions that the City shall take pursuant to this Consent Decree, NL releases, waives, and discharges the City itself and its elected and appointed officials, officers, agents, and employees from any and all claims, demands, damages, or losses, whether known or unknown, absolute or contingent, made or asserted or those that could be asserted by NL against the City related to the site, including any claims arising out of any action the City has taken or failed to take with respect to the Site.

However, nothing in this Consent Decree shall be construed as a waiver by the City of the right to prosecute or otherwise take action with regard to future violations with respect to conduct by NL occurring after the date of entry of the Consent Decree or any law based on new Site conditions or the terms and conditions of this Consent Decree or to obtain fines or penalties, if any, or any other relief with respect to future violations. Further, nothing in this Consent Decree shall be construed as a waiver by NL of any of its rights to enforce this Consent Decree, or defend itself

against any future claims, fines, penalties, or other actions arising from any alleged future violations or to assert or otherwise take action with respect to future violations by the City of NL's rights or interests.

14. If the City transfers title to the Site to another party and the City obtains any protections from the party acquiring the Site in regard to environmental conditions, the City shall make a reasonable good faith effort to obtain the same environmental protections provided to the City for NL.

#### **XII. TERM OF CONSENT DECREE**

15. Until such time as NL completes the work required under this Consent Decree and complies with all other requirements thereunder, this Court shall retain jurisdiction of this matter to enforce the provisions of this Consent Decree.

#### **XIII. NOTICE**

16. Whenever, under the terms of this Consent Decree, notice, correspondence, payment, or other written communication or information is required to be submitted or forwarded by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or other respective successors give written notice to the other party of another individual designed to receive such communications:

As to NL:

Marcus A. Martin  
Counsel for NL  
1630 30<sup>th</sup> Street, Suite 508  
Boulder, Colorado 80301  
Fax: (303) 442-3951

and

David B. Garten  
Vice President, General Counsel and Secretary  
NL Industries, Inc.  
16825 Northchase Dr, Suite 1200  
Houston, Texas 77060  
Fax: (281) 423-3333

As to the City:

Brian D. Bossert  
Assistant Corporation Counsel  
30 N. LaSalle Street, Suite 900  
Chicago, Illinois 60602  
Fax: (312) 744-6798

Notice shall be effective when received. Notice by fax is acceptable.

**XIV. MISCELLANEOUS**

17. This Consent Decree represents the entire agreement and understanding among the parties. The recitals to this Consent Decree are incorporated into and are an integral part of this Consent Decree. All headings in this Consent Decree are provided as a matter of convenience only, and shall not govern or be used to interpret the meaning of any provisions in this Consent Decree.

18. The undersigned representative for each party certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Decree, and to legally bind the party he or she represents to this Consent Decree.

19. This Consent Decree, and the rights, duties, and obligations hereunder, are expressly contingent upon the Court's entry of a good faith finding under the Illinois Joint Tortfeasors Contribution Act that this settlement is fair, reasonable, and in good faith, and which bars all claims, including cross-claims, against NL relating to the Site and dismisses the Lawsuit with prejudice. The

City and NL will cooperate with each other in drafting and filing any documents necessary to obtain this order.

So ordered this \_\_\_\_ day of \_\_\_\_\_, 1999.

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Sidney A. Jones III  
Cook County Circuit Court Judge

Date: *June 10, 1999*

FOR NL INDUSTRIES, INC.

By: *David B. Garten*  
David B. Garten  
Vice President, General Counsel  
and SecretaryDate: *June 9, 1999*

FOR THE CITY OF CHICAGO

BRIAN L. CROWE,  
Corporation CounselBy: *Susan J. Herdina*  
Susan J. Herdina  
Deputy Corporation CounselDate: *6/9/99*FOR THE CITY OF CHICAGO  
DEPARTMENT OF ENVIRONMENTBy: *William F. Abolt*  
William F. Abolt  
Commissioner